



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

tract on completion of the payments, unless his subsequent agreement was obtained by fraud.

Error to Circuit Court, Rockbridge County.

Suit in equity by Ben Porter against J. M. Withrow and others subsequently revived against J. M. Withrow's executrix. Decree for complainant, and defendants bring error. Reversed.

Wallace Ruff, of Lexington, and *Curry & Curry*, of Staunton, for plaintiffs in error.

Hugh A. White, of Staunton, for defendant in error.

COMMONWEALTH *v.* THOMPSON.

Nov. 17, 1921.

[109 S. E. 447.]

1. Criminal Law (§ 134 (1*))—Apprehension that Prisoner Cannot Have Fair Trial Is Insufficient to Require Change of Venue.—A mere apprehension by accused that he cannot have a fair trial in the county in which the offense was committed because of prejudice is not sufficient to support a motion for change of venue, but he must establish by independent and disinterested testimony facts which make it probable that his fears are well founded.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 781.]

2. Criminal Law (§ 134 (1*))—Public Attitude Requiring Change of Venue Must Be That at Time of Trial.—Testimony in support of a motion for change of venue because of prejudice which would prevent a fair trial must establish the condition in the public mind at the time of trial.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 781.]

3. Criminal Law (§ 121*)—Court Has Wide Discretion Over Motion for Change of Venue for Prejudice.—In ruling on a motion under Code 1919, § 4914, for change of venue because of local prejudice, which would prevent a fair trial, the trial court has a wide discretion.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 787.]

4. Criminal Law (§ 134 (1*))—Proof Held Not to Show Abuse of Discretion in Denying Change of Venue.—Proof that, after accused was arrested at the time of the homicide, the officers were prevented by mobs from removing him to another place, and that he was struck by members of the mob, and subsequently made his escape, but that at the time there was no attempt to lynch him, and that more than two months since had elapsed, during which time no demonstration had been made against him, though part of the time he was in jail

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

within the county, held not to show abuse of discretion in denying change of venue because of local prejudice.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 786.]

5. Criminal Law (§ 1151*)—Application for Continuance Is Addressed to Court's Discretion.—A motion for continuance in a criminal case is addressed to the sound discretion of the court under all circumstances of the case, and the court's decision will not be reversed unless plainly erroneous.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 455.]

6. Criminal Law (§ 603 (2)*)—Denial of Continuance at Term of Indictment Held Not Abuse of Discretion.—The denial of continuance on oral application made the day after indictment was not an abuse of discretion where the application did not show how long counsel represented accused, nor show the impossibility of procuring testimony in behalf of accused, especially in view of Const. 1902, § 8, guaranteeing a speedy trial, and Code 1919, § 4893, enacted to secure such trial.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 298.]

7. Criminal Law (§ 24*)—Homicide (§§ 22 (2), 146*)—Any Willful, Deliberate, and Premeditated Killing Is "First Degree Murder" and Malice Implied Therefrom; Intent Presumed from Unlawful Act.—Any willful, deliberate, and premeditated killing is "murder in the first degree," and the law infers malice from such a killing, and holds that a man intends that which he does, or which is the immediate or necessary consequence of his act.

[Ed. Note.—For other definitions, see Words and Phrases; First and Second Series, Murder in First Degree. For other cases, see 7 Va.-W. Va. Enc. Dig. 114.]

8. Homicide (§ 22 (3)*)—Premeditation Does Not Require Existence of Intent for Definite Time.—To constitute murder in the first degree it is not necessary that intent to kill shall exist for any particular length of time, but is only necessary that such intent should come into existence at the time of the killing or at any previous time.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 117.]

9. Homicide (§ 286 (3)*)—Instruction on Deliberation and Premeditation Held Not Improper.—In a prosecution for homicide, where the court gave the usual approved instruction that the infliction of a mortal wound with a deadly weapon is prima facie willful deliberate, and premeditated murder, omitting therefrom their usual conclusion that it throws on the prisoner the necessity of showing extenuating circumstances, was not improper, since the expression prima facie shows it was susceptible of rebuttal, which could only come from accused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 155.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Botetourt County.

Edmond Thompson was convicted of murder in the first degree, and he brings error. Affirmed.

Willis, Adams & Hunter, of Roanoke, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

COFFMAN'S ADM'R *v.* COFFMAN et al.

Nov. 17, 1921.

[109 S. E. 454.]

1. Wills (§ 488*)—Extrinsic Evidence Admissible in Aid of Interpretation of Ambiguous Will.—Extrinsic evidence in aid of the interpretation of wills cannot be used if the will is plain and unambiguous, but where the language is susceptible of more than one interpretation, resort may be had to such evidence, subject to certain limitations.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

2. Wills (§ 487 (2)*)—Extrinsic Evidence of Circumstances Concerning Testator's Property, Family Relationships, etc., Admissible, But Not His Declarations of Intention.—Extrinsic evidence of facts and circumstances concerning testator, his property and family, claimants under the will, and their relation to him, etc., is admissible, in cases of disputed interpretation, to ascertain the meaning of the words as used and understood by testator.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

3. Wills (§ 487 (3)*)—Evidence of Testator's Declarations of Intention Inadmissible, Except to Identify Persons or Things.—Evidence of testator's declarations of intention is inadmissible, except to show which of two or more persons or things equally well described was meant by him.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

4. Wills (§ 487 (2, 3)*)—Declarations of Intention to Exclude Collateral Kindred Held Inadmissible, but Evidence as to Family Relationships and Attitude toward Them Admissible.—In a suit involving the construction of a will, where testator's sisters and brother, who were not mentioned, claimed, as heirs, property as to which they claimed he died intestate, testator's declarations as to his intent to exclude them from any share in his estate were inadmissible, but evidence showing his situation, particularly the character and value of his property, his family relationships, and his attitude toward claimants was admissible to determine his probable intent.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.